

September 27, 2000

**SENT VIA E-MAIL, U.S. MAIL AND/OR
FEDERAL EXPRESS**

Magalie Roman Salas, Secretary

Federal Communications Commission

Portals II, 445 12th Street SW

Suite TW-A325

Washington, DC 20554

re: NSD-L-00-169, CC Docket No. 96-98

In the Matter of the Massachusetts Department of Telecommunications and Energy's
Petition for Delegation of Additional Authority to Implement Number Conservation
Measures in Massachusetts

Dear Ms. Salas:

Enclosed for filing please find one original and five copies of the Massachusetts Attorney General's Comments. Please stamp one copy and return it to us in the enclosed prepaid, self-addressed envelope. I have filed a copy of these comments electronically through the Commission's ECFS service (proceeding number 96-98) and, as directed in the August 29, 2000 Public Notice, have sent two copies and an e-mail to Al McCloud, FCC, notifying him that we have filed comments in this proceeding.

Sincerely,

Karlen J. Reed

Assistant Attorney General

Regulated Industries Division

KJR/kr

Enc.

cc: Al McCloud, CCB/NSD (w/2 enc.) and via e-mail

Aaron Goldberger, CCB/NSD (w/enc.) and via e-mail

Attached service list (w/enc.)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re the Matter of the Massachusetts Department)

of Telecommunications and Energy's Petition for) NSD-L-00-169

Delegation of Additional Authority to Implement) CC Docket 96-98

Number Conservation Measures in Massachusetts)

_____)

**MASSACHUSETTS ATTORNEY GENERAL'S COMMENTS ON THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND
ENERGY'S PETITION FOR DELEGATION OF ADDITIONAL AUTHORITY
TO IMPLEMENT NUMBER CONSERVATION MEASURES IN
MASSACHUSETTS**

I. Introduction.

The Attorney General of the Commonwealth of Massachusetts, Thomas F. Reilly ("Massachusetts Attorney General"), urges the Federal Communications Commission ("FCC" or "Commission") to grant the August 3, 2000, petition filed by the Massachusetts Department of Telecommunications and Energy ("DTE"), which seeks delegation by the FCC of interim authority to implement various area code conservation measures on a statewide basis until the FCC implements nation-wide conservation measures.⁽¹⁾ The DTE Petition includes the endangered 413 area code serving all of Western Massachusetts, and granting the petition will complement the DTE's existing number conservation authority for Eastern Massachusetts.⁽²⁾

The Attorney General submits that the Commission should grant the DTE Petition because allowing the DTE to administer number pooling and other conservation measures on a statewide basis will greatly enhance the DTE's ability to allocate scarce number resources efficiently while meeting consumer demands and carrier needs, pending nationwide number pooling administration.

II. Background.

As described in its Petition, the DTE seeks the same enforcement authority statewide that the FCC has already granted the DTE for Eastern Massachusetts, specifically: (1) institute thousands-block pooling trials; (2) reclaim reserved NXX ("exchange") codes, and portions of those codes; (3) set numbering allocation standards; (4) set and/or revise rationing procedures; (5) hear and address claims of carriers seeking numbering resources outside the rationing process; and (6) maintain rationing procedures for six months following area code relief. The DTE acknowledges that any delegation of authority would be interim, not permanent, and would be administered according to the FCC's directives in the *Pennsylvania Numbering Order*,⁽³⁾ the *Massachusetts Delegation Order*, and the *Numbering Resource Order*⁽⁴⁾ (DTE Petition at 1).

The DTE based its Petition on an announcement made during a June 20, 2000, 413 NPA industry meeting by NeuStar, Inc. ("NeuStar"), the North American Numbering Plan Administrator. According to NeuStar, only 305 NXX codes remained available in the 413 NPA, carriers were requesting NXX codes in the 413 NPA at the rate of about 14 codes per month, and it expected that the 413 NPA will reach exhaust (*i.e.*, no more numbers would be assignable to carriers) by the first quarter of 2002.⁽⁵⁾ During the meeting, industry members recommended that the DTE issue a relief order in September 2000 adopting an all-services overlay, rather than a geographic split, as the area code relief plan for Western Massachusetts, and asked that the new overlay be in place by March 2002.⁽⁶⁾ NeuStar did not declare jeopardy at this meeting, nor did the industry consider a rationing plan for the 413 NPA.

NeuStar filed a relief petition with the DTE on behalf of the industry on August 1, 2000, and described the industry's overlay plan.⁽⁷⁾ A month later the DTE opened a new area code relief docket for the 413 NPA (DTE 00-64) and issued a procedural schedule that envisions four public hearings in Western Massachusetts and an opportunity for written comment.⁽⁸⁾

III. Argument.

The DTE Petition meets all the criteria set by the Commission to merit delegation of interim statewide authority. As the Commission explained in its *Numbering Resource Order*, states seeking interim authority must demonstrate that: (1) the NPA is in jeopardy; (2) the NPA in question has a remaining life span of at least a year; and (3) the NPA contains one of the largest one hundred Metropolitan Statistical Areas ("MSAs") or is served by wireline carriers, the majority of which are capable of local number portability.⁽⁹⁾ Clearly there is no doubt that the DTE Petition satisfies the latter two criteria -- the estimated exhaust date of the 413 NPA is first quarter 2002, and the 413 NPA contains Springfield, Massachusetts, one of the top 100 MSAs in the nation.⁽¹⁰⁾ As explained below, the DTE Petition also satisfies the first criterion -- that the NPA is in jeopardy -- even though NeuStar has not yet officially declared the 413 NPA in jeopardy.

According to NeuStar, an NPA is in jeopardy when "the forecasted and/or actual demand for NXX resources will exceed the known supply during the planning/implementation interval for relief."⁽¹¹⁾ Although NeuStar has yet to declare that the 413 NPA is in jeopardy, the current usage rate in the 413 NPA is consistent with exhaust within eighteen months, well within NeuStar's two-and-a-half-years planning and implementation interval guideline cited by the DTE in its Petition (DTE Petition at 3, n. 5). Moreover, the DTE's description of the rapid, unexpected consumption of numbers in the 413 NPA has satisfied the "special circumstances" exception found in the *Numbering Resource Order* to justify an interim delegation of number pooling authority.⁽¹²⁾ The Massachusetts Attorney General submits that the 413 NPA is, indeed, in a state of jeopardy despite NeuStar's lack of a formal declaration.⁽¹³⁾

As part of formally declaring an NPA to be in jeopardy, NeuStar typically asks the industry, in a post-jeopardy declaration relief meeting, to reach a consensus on a

rationing plan designed to restrict the allocation of exchange codes until the state commission implements a relief plan.⁽¹⁴⁾ There has been no jeopardy declaration in the 413 NPA, so there is no mechanism in place or incentive for the industry to ration the remaining exchange codes. Because there is no rationing in place in the 413 NPA, carrier requests for exchange codes are not restricted. This accelerates the depletion of the 413 NPA and increases the probability that Western Massachusetts will need a new area code within the next eighteen months.

Furthermore, the Commission, in its *Pennsylvania Numbering Order*, has authorized state commissions, with the aid of NeuStar, to create and impose a mandatory rationing plan upon the industry in NPAs where the industry has not created its own rationing plan.⁽¹⁵⁾ The Massachusetts Attorney General, through these comments, urges the DTE and NeuStar to exercise that authority to its fullest as an attempt to slow the unnecessarily rapid consumption of NXX codes in Western Massachusetts.⁽¹⁶⁾

IV. Conclusion.

The DTE has exercised some of its existing delegated number authority over NPAs in Eastern Massachusetts but has not yet begun number pooling in any NPA.⁽¹⁷⁾ The DTE has opened a relief docket and conducted a preliminary investigation into the causes for the rapid depletion of the NXX codes in the 413 NPA.⁽¹⁸⁾ The Massachusetts Attorney General commends the efforts of the Commission and its staff to solve the national numbering crisis and urges the Commission to grant the DTE's Petition promptly. Delegation of interim statewide authority will allow the DTE to manage number usage to postpone or avoid new area codes in Western Massachusetts and statewide, while respecting carrier needs and legitimate consumer demands for numbers, pending nationwide number pooling administration.

Respectfully submitted,

THOMAS F. REILLY

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Dated: September 27, 2000

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re the Matter of the Massachusetts Department)
of Telecommunications and Energy's Petition for) NSD-L-00-169
Delegation of Additional Authority to Implement) CC Docket 96-98
Number Conservation Measures in Massachusetts)
_____)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the attached service list in this proceeding by either hand-delivery or U.S. mail.

Dated at Boston this 27th day of September 2000.

Karlen J. Reed

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In The Matter of The Massachusetts Department of)

Telecommunications and Energy's Petition for)

Delegation of Additional Authority to Implement) NSD-L-00-169

Implement Number Conservation Measures in) CC Docket 96-98
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1. *In the Matter of Massachusetts Department of Telecommunications and Energy's Petition for Delegation of Additional Authority to Implement Number Conservation Measures in Massachusetts*, filed August 3, 2000 ("DTE Petition").
2. *Massachusetts Department of Telecommunications and Energy Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes*, CC Docket 96-98, NSD-L-99-17, Order, 14 FCC Rcd 17447 (September 15, 1999) ("Massachusetts Delegation Order"); DTE Petition at 9-10.
3. *Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, Memorandum Opinion and Order and Order on Reconsideration, CC Docket No. 96-98, 13 FCC Rcd 19009, 19025 (September 28, 1998) (*recon. pending*) ("Pennsylvania Numbering Order").
4. *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket 99-200, 15 FCC Rcd 7574 (July 30, 2000) ("Numbering Resource Order").
5. NeuStar Minutes for the 413 NPA Relief Planning Meeting, approved July 25, 2000.
6. *Id.* at 2-3 (18 months from September 2000).
7. Petition of NeuStar, Inc., as the North American Numbering Plan Administrator and on behalf of the Massachusetts telecommunications industry (filed August 1, 2000).

8. Notice of Public Hearings, D.T.E. 00-64, *Western Massachusetts 413 Area Code Relief* (September 7, 2000). Public hearings are scheduled for October 17, 2000 (Great Barrington, MA), October 18, 2000 (North Adams, MA), October 24, 2000 (Springfield, MA), and October 25, 2000 (Greenfield, MA). The DTE also requested written comments on the NeuStar Petition to be filed by October 27, 2000.

9. *Numbering Resource Order* at ¶ 170.

10. DTE Petition at 5. According to the 1997 Census, Springfield, Massachusetts holds the #70 position. U.S. Census Bureau, Statistical Abstract of the United States: 1999, Table No. 44.

11. DTE Petition at 3, n. 5; Central Office Code (NXX) Administration Guidelines, Alliance for Telecommunications Industry Solutions, INC 95-0407-008, reissued March 3, 2000 ("INC Guidelines"), Section 9.3 at 25; p. 37.

12. The "special circumstances" test requires the state commission to make a satisfactory showing that number pooling would be of benefit in the NPA. *Numbering Resources Order* at ¶ 170. The FCC has found special circumstances to exist where NeuStar has not formally declared the NPA to be in jeopardy (e.g., *Petition of the Arizona Corporation Commission for Delegated Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, NSD-L-99-100, and *Petition of the Colorado Public Utilities Commission for Additional Delegated Authority to Implement Number Resource Optimization Measures*, CC Docket No. 96-98, NSD-L-00-16, DA 00-1616, Order [rel. July 20, 2000] at ¶¶ 23-28).

13. Two more state commissions, the Missouri Public Service Commission and the Oklahoma Corporation Commission, recently filed petitions with the FCC seeking an interim delegation for number conservation authority although NeuStar has not formally declared their respective NPAs to be in jeopardy. *cf.* In the Matter of Missouri Public Service Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures in the 314, 417, 573, 636, 660 and 816 Area Codes, *Missouri Public Service Commission's Petition for Delegation of Authority to Implement Number Pooling in the 816 Area Code*, CC Docket No. 96-98 (filed September 12, 2000); and *Oklahoma Corporation Commission's Expedited Decision for Delegation of Authority to Implement Number Conservation Measures*, CC Docket No. 96-98 (filed September 20, 2000).

14. INC Guidelines, Section 9.3 at 25-26.

15. *Pennsylvania Numbering Order* at ¶ 24; DTE Petition at 12; INC Guidelines Section 9.3.1.1 at 25, n. 22.

16. *Western Massachusetts 413 Area Code Relief*, DTE 00-64, Notice of Public Hearings (September 7, 2000).

17. Although the DTE has not begun number pooling in Eastern Massachusetts, the DTE has heard and addressed requests for NXX codes outside the rationing process sought by ATT Broadband (formerly MediaOne), and has reviewed requests by Sprint PCS and AT&T Wireless to waive the DTE's 75% fill-rate requirement (DTE 99-99, *Number Pooling*, Letter Orders dated February 11, 2000 [modified February 16, 2000], March 29, 2000, and June 12, 2000, respectively).

18. On June 7, 2000, the DTE required confidential utilization rates and three-year forecasts from all 413 NPA exchange code holders; based on that inquiry, the DTE identified in its Petition one source of the drain on numbers from Western Massachusetts ("the Department is struck by the recent drain on numbering resources by unified messaging service providers, such as eFax.com ... [an] Internet facsimile service that appears to request large blocks of numbers primarily in rural and previously non-jeopardy NPAs."). DTE Letter Order to All 413 Western Massachusetts LNP and Wireless Carriers (June 7, 2000); DTE Petition at 8.